



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/813,950	03/03/97	ASSMUS	M 583-252-0-FW

IM62/1014
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EXAMINER

SELLERS, R

ART UNIT

PAPER NUMBER

1712

37

DATE MAILED:

10/14/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory ActionApplication No.
08/813,950

Applicant(s)

Assmus And Petereit

Examiner

Robert Sellers

Group Art Unit

1712

THE PERIOD FOR RESPONSE: [check only a) or b)]

a) ☒ expires six months from the mailing date of the final rejection.b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

☒ Appellant's Brief is due two months from the date of the Notice of Appeal filed on Oct 5, 1999 (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Oct 5, 1999 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

☐ The proposed amendment(s):

☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.

☐ will not be entered because:

☐ they raise new issues that would require further consideration and/or search. (See note below).

☐ they raise the issue of new matter. (See note below).

☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.

☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE:

☐ Applicant's response has overcome the following rejection(s):

☐ Newly proposed or amended claims _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See the attachment.

☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.


☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: NoneClaims objected to: NoneClaims rejected: 17-24

☐ The proposed drawing correction filed on _____ ☐ has ☐ has not been approved by the Examiner.

☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Other


ROBERT SELLERS
PRIMARY EXAMINER
ART UNIT 1712

Art Unit: 1712

The evidence presented in the declaration filed October 5, 1999 is unpersuasive. The microphotographs for stearyl alcohol and 50% by weight of glycerol monostearate show differences in homogeneity between hot-melt application at 65°C (representative of the closest prior art) vs. 100°C and 150°C (reflective of the claimed range) if interpreted by the presence of a thick dark outline. However, no distinction in homogeneity is seen when comparing stearic acid, polyethylene glycol, and 80% by weight of glycerol monostearate at 65°C vs. 100°C.

Since it is apparent that homogeneity is a function of the type of flow improver and the amount of a given species of flow improver, the evidence is not commensurate in scope with the claims regarding a representative sampling of the other untested species of flow improvers such as the chemically distinct sugar or ester thereof, a triglyceride and wax. Furthermore, the showings are not commensurate in scope with the claimed wide proportion of flow improver of from 5-95% by weight via the testing at only 50% and 80% by weight of glycerol monostearate.

The data from the declaration filed June 21, 1999 wherein from 20-80% by weight of glycerol monostearate is tested is deficient due to the lack of microphotographic corroboration of the mere visual observations of the homogeneity. Such a range does not confirm the criticality of a flow improver level of as low as 5% by weight and as high as 95% by weight which, according to the second declaration, exhibits less homogeneity as the concentration increases (Compare 50% by weight of glycerol monostearate vs. 80% by weight thereof.).

rs

10/13/99



ROBERT E. SELLERS
PRIMARY EXAMINER
GROUP 150